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Grantor 1 =
Spouse =
Grantor 2 =
Bank =
Trust 1 =
Trust 2 =
Trust 3 =

Trust 4 =
Merged Trust A =
Merged Trust B =
Merged Trust C =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Merger =
Agreement 1

Merger =
Agreement 2

Merger =

Agreement 3

Court =
State =
State Law 1 =
State Law 2 =
State Law 3 =
Beneficiaries, =
individually
Beneficiary

A =

Dear :

This responds to your letter dated September 1, 2009 requesting a ruling pertaining to the estate, gift, and generation-skipping transfer tax effects of a proposed merger of Trust 1 and Trust 2 (Merged Trust A), a proposed merger of Trust 3 and Trust 4 (Merged Trust B), and then a proposed merger of Merged Trust A and Merged Trust B (Merged Trust C).

The facts submitted and representations made are as follows. Grantor 1 is the daughter of Grantor 2. Spouse is the spouse of Grantor 1. Grantor 1 and Spouse are alive. Grantor 2 is deceased. Beneficiaries are the grandchildren of Grantor 1 and the great-grandchildren of Grantor 2.

On Date 1, a date prior to September 26, 1985, Grantor 1 created and funded an irrevocable trust (Trust 1) for the benefit of Beneficiaries. She appointed herself, Spouse, and Bank as trustees of Trust 1.

On Date 2, a date prior to September 26, 1985, Grantor 1 created and funded another irrevocable trust (Trust 2) for the benefit of Beneficiaries. She appointed herself, Spouse, and Bank as trustees of Trust 2.

On Date 3, a date after September 25, 1985, Grantor 2 created and funded an irrevocable Trust (Trust 3) for the benefit of Beneficiaries. She appointed Grantor 1 and Spouse as trustees of Trust 3. Grantor 2 did not allocate any portion of her \$1,000,000 generation-skipping transfer (GST) exemption to the transfer. She reported the transfer as a direct skip on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return and paid the GST tax liability.

On Date 4, a date after September 25, 1985, Grantor 2 created and funded another irrevocable Trust (Trust 4) for the benefit of Beneficiaries. She appointed Grantor 1 and

Spouse as trustees of Trust 4. Grantor 2 did not allocate any portion of her \$1,000,000 generation-skipping transfer (GST) exemption to the transfer. She reported the transfer as a direct skip on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return and paid the GST tax liability.

Under the terms of Trust 1, the trustees may distribute income and principal as necessary and advisable for the education, maintenance, support, health and reasonable comfort and to maintain the respective accustomed standards of living of Beneficiaries, their spouses, and their descendants. Trustees must accumulate any undistributed income and add it to principal.

Upon the earlier of (i) the youngest living child of Grantor 1 to attain age fifty, (ii) the death of the last to survive of Grantor 1's children, or (iii) at such sooner time as Bank may determine to be in the best interest of the beneficiaries and prospective beneficiaries of Trust 1, the trustees will divide Trust 1 into separate shares. The trustees must create one share for the benefit of each living Beneficiary and one share for the benefit of the living descendants, per stirpes, of each deceased Beneficiary who has one or more living descendants. After division, the trustees have discretion to distribute the income or principal of Beneficiary's share for the education, maintenance, support, health and reasonable comfort and to maintain the respective accustomed standards of living of Beneficiary, Beneficiary's spouse, and Beneficiary's descendants and their respective spouses. When Beneficiary attains age thirty, the trustees must distribute one-third of the trust estate to Beneficiary. Likewise, upon attaining age thirty-five, the trustees must distribute one-half of the remaining trust estate to Beneficiary, and upon attaining age forty, Beneficiary receives the remaining trust estate.

After the division of Trust 1 into separate shares and if a Beneficiary dies before age forty, Beneficiary has the power to appoint his share to any persons (excluding his estate, creditors, creditors of his estate, Grantor 1 or Spouse) by Will. If Beneficiary fails to exercise this power of appointment, the trustees will distribute such Beneficiary's share to his living descendants, per stirpes, or if such Beneficiary has no living descendants, to the living descendants of such Beneficiary's parent, per stirpes. If such Beneficiary's parent has no living descendants, then the trustees will distribute such share to Grantor 1's living descendants, per stirpes, or if Grantor 1 has no living descendants, then to A.

If a descendant of Beneficiary becomes entitled to a fractional share of the trust estate prior to attaining age thirty, other than by reason of the exercise of Beneficiary's power of appointment, the trustees are required to hold such amounts in trust for the benefit of such descendant. The trustees may pay the income and principal to such descendant for the descendant's education, maintenance, support, health and reasonable comfort and to maintain his accustomed standard of living. Once such descendant attains age thirty, the trustees will distribute the entire trust estate to the descendant. If the descendant dies before attaining age thirty, the trustees will distribute the trust estate to

the descendant's intestate heirs (other than Grantor 1 and Spouse) as determined under State law in effect at the time of the distribution.

If any share passes, other than by reason of the exercise of a power of appointment, to a descendant of Grantor 1 for whose benefit a share exists in trust, such shares will be combined and administered under the same terms as the original share.

If Trust 1 has not terminated prior to the twenty-first anniversary of the death of the last to survive of Grantor 1's descendants living on Date 1, then such share will terminate, and the trustees will distribute the trust estate to the beneficiary.

Under the terms of Trusts 2 and 3, the trustees are prohibited from distributing income or principal prior to the division dates of Trusts 2 and 3. The trustees must divide Trusts 2 and 3 into separate shares upon the earlier of the oldest Beneficiary attaining the age of thirty-five and the death of Grantor 1's last surviving child. Upon division, the trustees must set aside one share for the benefit of each living Beneficiary and one share for the benefit of the living descendants, in sub-shares per stirpes, of each deceased Beneficiary leaving living descendants.

Once divided into separate shares, the trustees have discretion to distribute principal to Beneficiary or his descendant for their maintenance and education, accidents, illness or other emergencies, purchasing, building or improvement of a home or establishment in a business or profession, or any other purpose the trustees deem to be worthwhile and in the best interests of Beneficiary or his descendants. The trustees may distribute all income to Beneficiary or his descendants or may accumulate income and add it to principal. The trustees have discretion to distribute the entire trust estate to Beneficiary once he attains age thirty-five.

Under Trust 2, if a Beneficiary dies before distribution of the entire trust estate, the trustees will distribute such share to Beneficiary's living descendants, per stirpes, or if the Beneficiary has no living descendants, to the trusts established for the other living Beneficiaries, per stirpes, and the descendants, per stirpes, of any deceased Beneficiary. If there are no living Beneficiaries or their descendants, the trustees will distribute the trust estate to Grantor 1's living children, or if Grantor 1 has no living children, then to Grantor 1's intestate heirs as determined under State law at the time of the distribution.

Under Trust 3, if a Beneficiary dies before distribution of the entire trust estate, the trustees will distribute the trust estate to Beneficiary's living descendants, per stirpes, or if Beneficiary has no living descendants, then to the trusts established for the other living Beneficiaries, with a deceased Beneficiary's share passing to his descendants. If there are no living Beneficiaries or living descendants of Beneficiaries, the trustees will distribute the trust estate to Grantor 1's living children, or if Grantor 1 has no living children, then to Grantor 1. If Grantor 1 is no longer living, the trustees will distribute the

trust estate to Grantor 2's intestate heirs as determined under State law at the time of the distribution.

The trustees of Trusts 2 and 3 are required to hold any amounts for distribution to persons under thirty years of age in trust and are authorized to distribute income or principal to such person for his support and education. The trustees must accumulate income and add it to principal. The trust will terminate at the earlier of such person attaining age thirty or such person's death. If such person dies before attaining age thirty, the trustees must distribute the trust estate such person's living descendants, per stirpes, or if such person has no living descendants, then the shares will be distributed in the same manner as the trust estates established for the benefit of Beneficiaries under Trusts 2 and 3, respectively.

If Trust 2 has not terminated prior to the date that is twenty-one years after the death of the last surviving descendant of Grantor 1 who was living on Date 2, Trust 2 will terminate, and the trustees will distribute the trust estate to the beneficiaries. If Trust 3 has not terminated by the date that is twenty-one years after the death of the last surviving descendant of Grantor 2 who was living on Date 3, then Trust 3 will terminate, and the trustees will distribute the trust estate to the beneficiaries.

In addition, under the terms of Trust 2, as long as Grantor 1 or any descendant is a trustee, the trustees' distribution powers are vested exclusively in the other trustees, Spouse and Bank.

Under the terms of Trust 4, the trustees are authorized to distribute principal, in their sole discretion, to Beneficiaries for any necessary or advisable purpose. Upon the earlier of the oldest Beneficiary attaining age thirty-five and the death of the last to die of Grantor 1's children, the trustees are instructed to divide Trust 4 into separate shares, one share for the benefit of each living Beneficiary and one share for the living descendants, per stirpes, of each deceased Beneficiary.

After Trust 4 is divided into sub-trusts, the trustees may exercise their discretion in distributing income to Beneficiary, and must accumulate and add to principal any income not distributed. Beneficiaries or their descendants, provided such distributions would be exempt from GST tax (or in an emergency situation, regardless of whether such distribution would be exempt from GST tax), may also receive discretionary distributions of principal for their maintenance and education, for accidents, illness or other emergencies, for purchasing, building or improving a home, or to become established in a business or profession, or for any other purpose that the trustees deem to be worthwhile and in the best interests of Beneficiary or any descendant of Beneficiary.

When Beneficiary attains thirty-five years of age, the trustees are authorized to distribute the entire trust estate to Beneficiary, subject to their discretion. If Beneficiary

dies before attaining age thirty-five or if any portion of the trust estate remains upon Beneficiary's death, the trustees will distribute the remainder to Beneficiary's living descendants, per stirpes, or if Beneficiary has no living descendants, then to the other living Beneficiaries, per stirpes. If there are no living Beneficiaries, then the trustees will distribute the trust assets equally to Grantor 1's living children. If Grantor 1 has no living children, then the trustees will distribute the trust estate to Grantor 1, if living, or if Grantor 1 is not living, then to Grantor 2's intestate heirs as determined under State law.

The trustees are instructed to hold in trust any distributions to a person under the age of thirty. Such person may receive discretionary distributions of principal for his support and education, and will receive the trust assets outright upon attaining age thirty. The trustees are required to accumulate income and add it to principal. If such person dies before attaining age thirty, the trust estate will pass in the same manner as each Beneficiary's trust passes above. Trust 4 will terminate prior to the twenty-first anniversary of the death of the last to die of the descendants of Grantor 2 living on Date 4, and the trust estate will be distributed to the beneficiary.

Each of Trusts 1, 2, 3, and 4 authorize the individual trustees to remove the corporate trustee and replace it with another corporate trustee. The individual trustees may also appoint replacement individual trustees. If no individual trustees are serving, then the majority of the living adult children of Grantor 1, or if there are no living adult children of Grantor 1, then the majority living adult Beneficiaries, may appoint a successor corporate or individual trustee(s); provided, however, if any one or more of the persons appointing a successor trustee to replace a removed trustee is a beneficiary of the trust, then the successor trustee may not be a "related or subordinate party" (as defined in § 672, determined as if such beneficiary was the grantor) with respect to such beneficiary.

State Law 1 provides that the grantor and all beneficiaries of a trust may consent to modify or terminate an irrevocable trust without court approval of such modification or termination. State Law 2 provides that interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, provided that the matters agreed to do not violate a material purpose of the trust and include terms and conditions that could be properly approved by a court.

State Law 3 provides that after notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination.

The trustees of Trusts 1, 2, 3, and 4 represent that on Date 5, pursuant to State Laws 1 and 2, the parties agreed to administrative modifications to Trusts 1, 2, 3, and 4. One of

the modified terms authorizes the trustees to merge the assets of a trust estate into a single trust estate, provided that in all respects deemed material by the trustees, the trust estates to be combined are held on the same terms and conditions and for the benefit of the same beneficiaries.

As stated above, the trustees of Trusts 1, 2, 3, and 4 propose merging Trust 1 and Trust 2 to form Merged Trust A, merging Trust 3 and Trust 4 to form Merged Trust B, and then merging Merged Trust A and Merged Trust B to form Merged Trust C. The purpose of the proposed mergers is for administrative convenience and greater efficiency of management and investment of the trust property. Prior to the mergers, after division of each trust, sixty sub-trusts will exist. After the proposed mergers, fifteen sub-trusts will exist. The proposed merger will allow each merged trust to be governed by one trust document, which will reduce the cost of administrative expenses such as tax compliance, accounting costs, and management fees.

Accordingly, on Date 5 pursuant to State law 3, the trustees of Trust 1 and Trust 2 executed Merger Agreement 1, which proposes to merge Trust 1 and Trust 2, creating Merged Trust A. Under section 1 of Merger Agreement 1, Trust 2 is the surviving document except that the fractional share of Merged Trust A representing the portion of the trust principal attributable to Trust 1 is subject to the following provisions.

(1) Until division of the trust estate under paragraph (2), the trustees have discretion to distribute income or principal for the education, maintenance, support, health and reasonable comfort and to maintain the respective accustomed standards of living of Beneficiaries and the spouses and descendants of Beneficiaries.

(2) Such fractional share will be divided into sub-trusts, one share for the benefit of each living Beneficiary and one share for the benefit of the living descendants, per stirpes, of each deceased Beneficiary on the date which is the earlier of (i) the date Grantor 1's oldest child attains age fifty, (ii) the death of the last to survive of Grantor 1's children, or (iii) sooner if Bank determines dividing the trust is in the best interest of the beneficiaries and prospective beneficiaries.

(3) The trustees have authority to distribute the fractional share of principal or income attributable to Trust 1 for the education, maintenance, support, health and reasonable comfort and to maintain the respective accustomed standards of living of Beneficiaries, Beneficiaries' spouses, and Beneficiaries' descendants and their respective spouses. Any income not distributed must be added to principal.

(4) The trustees must distribute one-third of such fractional share to Beneficiary upon attaining age thirty, one-half of such fractional share upon Beneficiary attaining age thirty-five, and the remainder of such fractional share upon attaining age forty.

(5) If a Beneficiary for whose benefit a sub-trust has been established dies before age forty, Beneficiary may appoint his share to such persons or organizations (other than his estate, creditors, creditors of his estate, Grantor 1 or Spouse) by Will. If Beneficiary fails to exercise such limited power of appointment, the fractional share will be distributed to Beneficiary's living descendants, per stirpes, or if Beneficiary has no living descendants, then to the living descendants, per stirpes, of the parent of Beneficiary, or if the parent of Beneficiary has no living descendants, then to the living descendants, per stirpes, of Grantor 1, or if Grantor 1 has no living descendants, then to A.

(6) If any of Grantor 1's descendants, other than a Beneficiary, are entitled to a distribution prior to attaining age thirty, the trustees must hold such distribution in trust and may distribute income or principal, subject to their discretion, for such descendant's education, maintenance, support, health and reasonable comfort and to maintain his accustomed standard of living. The trustees must accumulate and add any undistributed income to principal. Upon attaining age thirty, the trustees will distribute such share outright to the beneficiary. If the beneficiary predeceases age thirty, the trustees will distribute the trust estate to such person's intestate heirs (except Grantor 1 and Spouse) as determined by State law at the time of distribution.

(7) If any share of the trust of any of Grantor 1's descendants will pass, other than by exercise of a limited power of appointment, to another of Grantor 1's descendants for whose benefit there is a share then held in trust, then the trustees shall hold such share as part of and upon the same terms as the other original share of the other descendant.

(8) If such fractional share attributable to Trust 1 has not terminated prior to the twenty-first anniversary of the death of the last to die of the descendants of Grantor 1 living on Date 1, then such share shall terminate, and the trust estate will be distributed outright to the beneficiaries.

Merger Agreement 1 also provides that if any share of Merged Trust A has not terminated prior to the twenty-first anniversary of the death of the last to die of the descendants of Grantor 1 living on Date 2, such share shall then terminate.

Also on Date 5, the trustees of Trusts 3 and 4 executed Merger Agreement 2, which proposes to merge Trusts 3 and 4, creating Merged Trust B. Under section 1 of Merger Agreement 2, Trust 4 is the surviving document except for the following provisions.

(1) Until the earlier to occur of the oldest living Beneficiary attaining age thirty-five and the death of the last to die of Grantor 1's children living on Date 4, the trustees are authorized to distribute to each Beneficiary so much of the principal as such trustees deem necessary or advisable for any purpose, provided the total amount distributed may not exceed an amount equal to the fractional portion of the trust principal of Merged Trust B attributable to Trust 4.

(2) The trustees have discretion to distribute principal as necessary or advisable for a Beneficiary's descendant's maintenance and education, for accidents, illness or other emergencies, to enable such person to purchase, build or improve a home or to become established in a business or profession or for any other purpose that the trustees deem worthwhile and in the best interests of such person if such distribution would be exempt from GST taxes (or in emergency situations, whether or not such distribution would be exempt from GST taxes); provided, however, the total amount distributed may not exceed an amount equal to the fractional portion of Merged Trust B attributable to Trust 4.

(3) The fractional share of Merged Trust B attributable to Trust 3 terminates on the date prior to the twenty-first anniversary of the death of the last to die of the descendants of Grantor 2 living on Date 3. The fractional share of Merged Trust B attributable to Trust 4 terminates on the date prior to the twenty-first anniversary of the death of the last to die of the descendants of Grantor 2 living on Date 4.

Finally, on Date 5, the trustees of Merged Trusts A and B executed Merger Agreement 3, which proposes to merge Merged Trusts A and B, creating Merged Trust C. Under Merger Agreement 3, Merged Trust B is the surviving document. The terms of Merger Agreements 1 and 2 are incorporated into Merger Agreement 3, thereby requiring that the fractional portions of the Merged Trust C principal attributable to Trusts 1, 2, 3, and 4 continue to be governed by the distributive and perpetuities terms of Trusts 1, 2, 3, and 4, respectively. In addition, the total amount paid to Beneficiaries from Merged Trust C prior to its division into separate shares shall not exceed the fractional portion of Merged Trust C attributable to Trust 4. The total amount distributed under paragraph (2) of Merger Agreement 2 will not exceed an amount equal to the fractional portion of Merged Trust C attributable to Trust 4.

Merger Agreements 1, 2, and 3, require the respective trustees to determine the fractional shares of Merged Trusts A, B, and C attributable to Trusts 1, 2, 3, and 4 as of the effective date of the respective mergers.

On Date 6, Court approved the modifications to Trusts 1, 2, 3, and 4 and Merger Agreements 1, 2, and 3, conditioned on the trustees' receipt of a favorable ruling by the Internal Revenue Service that the proposed mergers will not subject Trusts 1, 2, 3, or 4 to the GST tax.

On Date 7, the oldest Beneficiary attained thirty-five years of age.

The trustees of Trusts 1 and 2 represent that on Date 8 pursuant to State Law 1, the parties agreed to administrative modifications to Trusts 1 and 2. They also represent that no additions have been made to either Trust 1 or Trust 2 after September 25, 1985.

Requested Rulings

1. Trusts 1 and 2 are exempt from the GST tax under § 2601 of the Internal Revenue Code (Code).
2. By reason of Grantor 2's payment of GST tax under § 2601 upon their creation, Trusts 3 and 4 are exempt from the GST tax with respect to distributions (upon termination or otherwise) from such trusts to Beneficiaries.
3. The proposed merger of Trust 1 and Trust 2 will not affect the grandfathered status of these trusts and will not cause any distributions from Merged Trust A or distributions upon termination of Merged Trust A to become subject to GST tax provided there are no post-merger additions to Merged Trust A.
4. The proposed merger of Trust 3 and Trust 4 will not affect the present GST tax status of such trusts and will not cause any distributions (upon termination or otherwise) from Merged Trust B to Beneficiaries to become subject to the GST tax provided there are no post-merger additions to Merged Trust B.
5. The proposed merger of Merged Trust A and B, to create Merged Trust C, will not affect the grandfathered status of Merged Trust A or the present GST tax status of Merged Trust B and will not cause any distributions from Merged Trust C (upon termination or otherwise) to Beneficiaries to become subject to the GST tax.
6. The proposed merger of Trust 1 and Trust 2 and the proposed merger of Trust 3 and Trust 4 will not result in a transfer by any of the beneficiaries that is subject to gift tax under § 2501.

Rulings 1 and 2

Section 2601 of the Code imposes a tax on each generation-skipping transfer. Section 2611 defines a generation-skipping transfer as (1) a taxable distribution, (2) a taxable termination, or (3) a direct skip. A direct skip is defined under § 2612(c) as a transfer subject to the estate or gift tax of an interest in property to a skip person. Section 26.2612-1(a) of the Generation-Skipping Transfer Tax Regulations provides that only one direct skip occurs when a single transfer of property skips two or more generations.

Section 2613(a)(1) provides that a skip person is any person which is 2 or more generations below the generation assignment of the transferor. Section 2613(a)(2) provides that a trust is a skip person if all interests in the trust are held by skip persons or if there is a person holding an interest in the trust, and at no time after such transfer may a distribution be made to a non-skip person.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2623 provides that the taxable amount

in the case of a direct skip is the value of the property received by the transferee. Section 2641(a) provides that the term “applicable rate” means with respect to any generation-skipping transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction”. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i), the GST tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985 will be considered an irrevocable trust except as provided in § 26.2601-1(b)(1)(ii)(B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

Under § 2653(a), if there is a generation-skipping transfer of any property to a trust, in order to determine if a generation-skipping transfer has occurred with respect to subsequent transfers from the portion of the trust attributable to such property, the trust is treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in the trust immediately after the transfer.

In § 26.2653-1(b), Example 1, T transfers property to an irrevocable trust for the benefit of T's grandchild, GC, and great-grandchild, GGC. During GC's life, the trustee has discretion to distribute the trust income to GC and GGC. At GC's death, the trust property passes to GGC. The example explains that both GC and GGC have an interest in the trust for purposes of chapter 13. The transfer by T to the trust is a direct skip, and the property is held in trust immediately after the transfer. After the direct skip, the transferor is treated as being one generation above GC, the highest generation individual having an interest in the trust. The example concludes that GC is no longer a skip person and distributions to GC are not taxable distributions. However, because GGC occupies a generation that is two generations below the deemed generation of T, GGC is a skip person and distributions of trust income to GGC are taxable distributions.

Trusts 1 and 2 were in existence and funded prior to September 26, 1985. Trustees 1 and 2 represent that no additions have been made to the principal of either trust after

September 25, 1985. Accordingly, based on the facts presented and representations made, we conclude that Trusts 1 and 2 are exempt from the GST tax under § 2601.

Trusts 3 and 4 were created after September 25, 1985 and are skip persons as defined in § 2613(a)(2). The instant case is identical to Example 1 in § 26.2653-1(b). The transfer of assets to Trust 3 on Date 3 and to Trust 4 on Date 4 were direct skips subject to GST tax, and the property was held in trust immediately after the transfer. After the direct skip, Grantor 2 is treated as being one generation above Beneficiaries. Therefore, Beneficiaries are no longer skip persons and distributions to such persons are not taxable distributions. Accordingly, based on the facts presented and the representations made, we conclude that distributions (upon termination or otherwise) from Trusts 3 and 4 to Beneficiaries are exempt from the GST tax under § 2601.

Rulings 3 through 5

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under §§ 26.2601-1(b)(1), (2) or (3) will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(A) provides that the distribution of trust principal from an exempt trust to a new trust or retention of trust principal in a continuing trust will not cause the new or continuing trust to be subject to the provisions of chapter 13, if - (1) either (i) the terms of the governing instrument of the exempt trust authorize distributions to the new trust or the retention of trust principal in a continuing trust, without the consent or approval of any beneficiary or court; or (ii) at the time the exempt trust became irrevocable, state law authorized distributions to the new trust or retention of principal in the continuing trust, without the consent or approval of any beneficiary or court; and (2) the terms of the governing instrument of the new or continuing trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(E), Example 1, considers a situation where, in 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A

corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate 21 years after the death of the last child of A to die who was alive at the time Trust was executed. Trust will terminate on the death of A, at which time the remaining trust principal will be distributed to A's issue, per stirpes. In 2002, the trustee distributes part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate 21 years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C, per stirpes. The terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of Trust, extending beyond any life in being at the date of creation of Trust plus a period of 21 years, plus if necessary, a reasonable period of gestation. Therefore, neither Trust nor the new trust will be subject to the provisions of chapter 13.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy §§ 2601-1(b)(4)(i)(A), (B), or (C)) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Section 26.2601-1(b)(4)(i)(E), Example 6, considers a situation where the grantor, in 1980, establishes an irrevocable trust for Grantor's child and the child's issue. In 1983, Grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and Grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for

in the original trust. Therefore, the example concludes that the trust that resulted from the merger will not be subject to the provisions of chapter 13.

The instant case involves facts that are similar to both Examples 1 and 6 in § 26.2601-1(b)(4)(i)(E) except that Trusts 3 and 4 were created and funded after September 26, 1985. The rules in § 26.2601-1(b)(4)(i) apply in the case of trusts that are exempt from GST tax because the trusts were in existence and irrevocable prior to September 26, 1985. No guidance has been issued concerning modifications that may affect the status of GST exempt distributions to the highest generation individual having an interest in a direct skip trust. At a minimum, a modification that would not affect the GST status of a grandfathered trust should similarly not affect the exempt status of distributions to the highest generation individual having an interest in a direct skip trust.

The terms of the governing instruments of Trusts 1, 2, 3, and 4 allow the trustee to merge the assets of the trust into a single trust estate, provided that in all respects deemed material by the trustees the trust estates to be combined are held on the same terms and conditions and for the benefit of the same beneficiaries. Although the distribution terms and vesting periods of Trusts 1, 2, 3, and 4 differ, Merger Agreements 1, 2, and 3 contain provisions to ensure that Trusts A, B, and C do not extend the time for vesting of any beneficial interest in the trusts.

Based on the facts presented and the representations made, we conclude that the distribution of principal from each Trust 1 and Trust 3 to each Trust 2 (Merged Trust A) and Trust 4 (Merged Trust B), respectively, and the distribution of principal from Merged Trust A to Merged Trust B (Merged Trust C) is pursuant to the terms of the governing instruments. Each of Trusts 1, 2, 3, and 4 authorize distributions of principal to new trusts without the consent or approval of any beneficiary or court. The terms of each Merged Trust A, Merged Trust B, and Merged Trust C will not extend the time for vesting of any beneficial interest in Trusts 1, 2, 3, or 4 in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation.

Moreover, under the terms of Merged Trust C, the beneficiaries' distribution rights under Trusts 1, 2, 3, and 4 and the perpetuities periods for each original trust are retained. Furthermore, State law prohibits the merger of trust estates if the result impairs the rights of any beneficiary, and it requires that the interests of each beneficiary in the resulting trust be substantially the same as the combined interests of the beneficiary in the trusts prior to the merger. Under these circumstances, the merger will not shift a beneficial interest to a lower generation nor will it extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts.

Based on the facts presented and the representations made, we conclude that the

mergers of Trust 1 and Trust 2, Trust 3 and Trust 4, and Merged Trust A and Merged Trust B, as described above, will not shift any beneficial interest in the trusts to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the merger of trusts will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in Trusts 1, 2, 3, or 4.

Accordingly, based on the information submitted and the representations made, we conclude that:

(1) The proposed merger of Trust 1 into Trust 2 will not affect the grandfathered status of these trusts and will not cause any distributions from Merged Trust A or distributions upon termination of Merged Trust A to become subject to GST tax provided there are no post-merger additions to Merged Trust A.

(2) The proposed merger of Trust 3 and Trust 4 will not affect the present GST tax status of such trusts and will not cause any distributions (upon termination or otherwise) from Merged Trust B to Beneficiaries to become subject to the GST tax provided there are no post-merger additions to Merged Trust B.

(3) The proposed merger of Merged Trust A into Merged Trust B, to create Merged Trust C, will not affect the grandfathered status of Merged Trust A or the present GST tax status of Merged Trust B and will not cause any distributions from Merged Trust C (upon termination or otherwise) to Beneficiaries to become subject to the GST tax.

Ruling 6

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by an individual, resident or nonresident. Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift will be considered the amount of the gift. Section 2512(b) states that where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration received shall be deemed a gift.

Based on the facts submitted and the representations made, the beneficial interests of the trust beneficiaries will not change as a result of the proposed merger of the trusts as described above. Accordingly, based upon the facts provided and the representations made, we rule that the proposed merger of Trust 1 and Trust 2, the proposed merger of Trust 3 and Trust 4 and the proposed merger of Merged Trust A and Merged Trust B

will not result in a transfer by any of the beneficiaries that is subject to federal gift tax under § 2501.

Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. The ruling(s) in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James F. Hogan
Branch 4 Chief, Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: